

Introduced by Senator Jackson

February 21, 2013

An act to amend Sections 21083.9, 21092, 21108, and 21152 of the Public Resources Code, relating to environmental quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 436, as introduced, Jackson. California Environmental Quality Act: notice.

(1) The California Environmental Quality Act (CEQA) requires a lead agency to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project, as defined, that it proposes to carry out or approve that may have a significant effect on the environment, as defined, or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires the lead agency to call at least one scoping meeting for a project that may affect highways or other facilities under the jurisdiction of the Department of Transportation if the meeting is requested by the department, or for a project of statewide, regional, or areawide significance. CEQA requires the lead agency to provide to specified entities a notice of at least one scoping meeting.

This bill would require a lead agency to conduct at least one public scoping meeting for the specified projects and to provide notice to the specified entities of at least one public scoping meeting.

(2) CEQA requires any lead agency that is preparing an EIR or a negative declaration or making a determination, pursuant to a specified provision of law, to provide public notice within a reasonable period of time prior to certification of the EIR or adoption of the negative declaration. Existing law requires that notice be given to the last known name and address of all organizations and individuals who previously

requested the notice and by at least one of several procedures, including by direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.

This bill would revise these notice requirements to require the notice be given to a list of specified parties, including the State Clearinghouse and project applicants, and by at least one of the several listed procedures.

(3) CEQA requires a state agency or local agency that approves or determines to carry out a project that is subject to the act, to file notice of the approval or determination with the Office of Planning and Research or the county clerk of each county in which the project will be located, respectively, and to have the notice posted in the Office of Planning and Research or the office of the county clerk, respectively.

This bill would also require the notices to be posted on the Office and Planning and Research's Internet Web site and the lead agency's Internet Web site, respectively. If the lead agency cannot maintain an Internet Web site with the specified information, the bill would require the lead agency to provide a link on its Internet Web site to the required information. The bill would also require a notice filed by a local agency to also be filed with the Office of Planning and Research. By requiring local agencies to follow specified notice requirements in regard to CEQA, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 21083.9 of the Public Resources Code
- 2 is amended to read:
- 3 21083.9. (a) Notwithstanding Section 21080.4, 21104, or
- 4 21153, a lead agency shall ~~enact~~ *conduct* at least one *public* scoping
- 5 meeting for either of the following:

1 (1) A proposed project that may affect highways or other
2 facilities under the jurisdiction of the Department of Transportation
3 if the meeting is requested by the department. The lead agency
4 shall call the scoping meeting as soon as possible, but not later
5 than 30 days after receiving the request from the Department of
6 Transportation.

7 (2) A project of statewide, regional, or areawide significance.

8 (b) The lead agency shall provide notice of at least one *public*
9 scoping meeting held pursuant to paragraph (2) of subdivision (a)
10 to all of the following:

11 (1) A county or city that borders on a county or city within
12 which the project is located, unless otherwise designated annually
13 by agreement between the lead agency and the county or city.

14 (2) A responsible agency.

15 (3) A public agency that has jurisdiction by law with respect to
16 the project.

17 (4) A transportation planning agency or public agency required
18 to be consulted pursuant to Section 21092.4.

19 (5) A public agency, organization, or individual who has filed
20 a written request for the notice.

21 (c) For a public agency, organization, or individual that is
22 required to be provided notice of a lead agency public meeting,
23 the requirement for notice of a scoping meeting pursuant to
24 subdivision (b) may be met by including the notice of a scoping
25 meeting in the public meeting notice.

26 (d) A scoping meeting that is held in the city or county within
27 which the project is located pursuant to the federal National
28 Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.)
29 and the regulations adopted pursuant to that act shall be deemed
30 to satisfy the requirement that a scoping meeting be held for a
31 project subject to paragraph (2) of subdivision (a) if the lead agency
32 meets the notice requirements of subdivision (b) or subdivision
33 (c).

34 (e) The referral of a proposed action to adopt or substantially
35 amend a general plan to a city or county pursuant to paragraph (1)
36 of subdivision (a) of Section 65352 of the Government Code may
37 be conducted concurrently with the scoping meeting required
38 pursuant to this section, and the city or county may submit its
39 comments as provided pursuant to subdivision (b) of that section
40 at the scoping meeting.

SEC. 2. Section 21092 of the Public Resources Code is amended to read:

21092. (a) A lead agency that is preparing an environmental impact report or a negative declaration or making a determination pursuant to subdivision (c) of Section 21157.1 shall provide public notice of that fact within a reasonable period of time prior to certification of the environmental impact report, adoption of the negative declaration, or making the determination pursuant to subdivision (c) of Section 21157.1.

(b) (1) The notice shall specify the period during which comments will be received on the draft environmental impact report or negative declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, the significant effects on the environment, if any, anticipated as a result of the project, the address where copies of the draft environmental impact report or negative declaration, and all documents referenced in the draft environmental impact report or negative declaration, are available for review, and a description of how the draft environmental impact report or negative declaration can be provided in an electronic format.

(2) This section shall not be construed in any manner that results in the invalidation of an action because of the alleged inadequacy of the notice content if there has been substantial compliance with the notice content requirements of this section.

(3) (A) The notice required by this section shall be given to ~~the last~~ all of the following:

(i) ~~The last~~ known name and address of all organizations and individuals who have previously requested notice, ~~and shall also be given by at least one of the following procedures:~~ notice.

(ii) *By mail to the owners and occupants of contiguous property shown on the latest equalized assessment roll.*

(iii) *By mail or electronic mail to responsible and trustee agencies.*

(iv) *By mail or electronic mail to a project applicant, if different than the lead agency, and the applicant's duly authorized agent.*

(v) *The State Clearinghouse.*

(B) *The notice required by this section shall also be given by at least one of the following procedures:*

~~(A)~~

1 (i) Publication, no fewer times than required by Section 6061
2 of the Government Code, by the public agency in a newspaper of
3 general circulation in the area affected by the proposed project. If
4 more than one area will be affected, the notice shall be published
5 in the newspaper of largest circulation from among the newspapers
6 of general circulation in those areas.

7 ~~(B)~~

8 (ii) Posting of notice by the lead agency on- and off-site in the
9 area where the project is to be located.

10 ~~(C) Direct mailing to the owners and occupants of contiguous~~
11 ~~property shown on the latest equalized assessment roll.~~

12 (c) For a project involving the burning of municipal wastes,
13 hazardous waste, or refuse-derived fuel, including, but not limited
14 to, tires, meeting the qualifications of subdivision (d), notice shall
15 be given to all organizations and individuals who have previously
16 requested notice and shall also be given by at least the procedures
17 specified in subparagraphs ~~(A), (B), and (C)~~ (A) and (B) of
18 paragraph (3) of subdivision (b). In addition, notification shall be
19 given by direct mailing to the owners and occupants of property
20 within one-fourth of a mile of any parcel or parcels on which is
21 located a project subject to this subdivision.

22 (d) The notice requirements of subdivision (c) apply to both of
23 the following:

24 (1) The construction of a new facility.

25 (2) The expansion of an existing facility that burns hazardous
26 waste which would increase its permitted capacity by more than
27 10 percent. For purposes of this paragraph, the amount of expansion
28 of an existing facility shall be calculated by comparing the
29 proposed facility capacity with whichever of the following is
30 applicable:

31 (A) The facility capacity approved in the facility's hazardous
32 waste facilities permit pursuant to Section 25200 of the Health and
33 Safety Code or its grant of interim status pursuant to Section
34 25200.5 of the Health and Safety Code, or the facility capacity
35 authorized in any state or local agency permit allowing the
36 construction or operation of a facility for the burning of hazardous
37 waste, granted before January 1, 1990.

38 (B) The facility capacity authorized in the facility's original
39 hazardous waste facilities permit, grant of interim status, or any
40 state or local agency permit allowing the construction or operation

1 of a facility for the burning of hazardous waste, granted on or after
2 January 1, 1990.

3 (e) The notice requirements specified in subdivision (b) or (c)
4 shall not preclude a public agency from providing additional notice
5 by other means if the agency so desires, or from providing the
6 public notice required by this section at the same time and in the
7 same manner as public notice otherwise required by law for the
8 project.

9 SEC. 3. Section 21108 of the Public Resources Code is
10 amended to read:

11 21108. (a) If a state agency approves or determines to carry
12 out a project that is subject to this division, the state agency shall
13 file notice of that approval or that determination with the Office
14 of Planning and Research. The notice shall identify the person or
15 persons in subdivision (b) or (c) of Section 21065, as reflected in
16 the agency's record of proceedings, and indicate the determination
17 of the state agency whether the project will, or will not, have a
18 significant effect on the environment and shall indicate whether
19 an environmental impact report has been prepared pursuant to this
20 division.

21 (b) If a state agency determines that a project is not subject to
22 this division pursuant to subdivision (b) of Section 21080 ~~or~~
23 ~~Section 21172~~, and the state agency approves or determines to
24 carry out the project, the state agency or the person specified in
25 subdivision (b) or (c) of Section 21065 may file notice of the
26 determination with the Office of Planning and Research. A notice
27 filed pursuant to this subdivision shall identify the person or
28 persons in subdivision (b) or (c) of Section 21065, as reflected in
29 the agency's record of proceedings. A notice filed pursuant to this
30 subdivision by a person specified in subdivision (b) or (c) of
31 Section 21065 shall have a certificate of determination attached
32 to it issued by the state agency responsible for making the
33 determination that the project is not subject to this division pursuant
34 to subdivision (b) of Section 21080 ~~or pursuant to Section 21172~~.
35 The certificate of determination may be in the form of a certified
36 copy of an existing document or record of the state agency.

37 (c) (1) A notice filed pursuant to this section shall be available
38 for public inspection, and a list of these notices shall be posted on
39 a weekly basis in the Office of Planning and Research. Each list

1 shall remain posted for a period of 30 days. The Office of Planning
2 and Research shall retain each notice for not less than 12 months.

3 *(2) A notice filed pursuant to this section shall be posted by the*
4 *Office of Planning and Research on its Internet Web site within*
5 *one business day after its filing. The notice shall remain on the*
6 *Internet Web site for not less than 12 months.*

7 SEC. 4. Section 21152 of the Public Resources Code is
8 amended to read:

9 21152. (a) If a local agency approves or determines to carry
10 out a project that is subject to this division, the local agency shall
11 file notice of the approval or the determination, within five working
12 days after the approval or determination becomes final, with the
13 county clerk of each county in which the project will be located.
14 The notice shall identify the person or persons in subdivision (b)
15 or (c) of Section 21065, as reflected in the agency's record of
16 proceedings, and indicate the determination of the local agency
17 whether the project will, or will not, have a significant effect on
18 the environment and shall indicate whether an environmental
19 impact report has been prepared pursuant to this division. The
20 notice shall also include certification that the final environmental
21 impact report, if one was prepared, together with comments and
22 responses, is available to the general public.

23 (b) If a local agency determines that a project is not subject to
24 this division pursuant to subdivision (b) of Section 21080 ~~or~~
25 ~~pursuant to Section 21172~~, and the local agency approves or
26 determines to carry out the project, the local agency or the person
27 specified in subdivision (b) or (c) of Section 21065 may file a
28 notice of the determination with the county clerk of each county
29 in which the project will be located. A notice filed pursuant to this
30 subdivision shall identify the person or persons in subdivision (b)
31 or (c) of Section 21065, as reflected in the agency's record of
32 proceedings. A notice filed pursuant to this subdivision by a person
33 specified in subdivision (b) or (c) of Section 21065 shall have a
34 certificate of determination attached to it issued by the local agency
35 responsible for making the determination that the project is not
36 subject to this division pursuant to subdivision (b) of Section 21080
37 ~~or Section 21172~~. The certificate of determination may be in the
38 form of a certified copy of an existing document or record of the
39 local agency.

1 (c) (1) A notice filed pursuant to this section shall be available
2 for public inspection, and shall be posted within 24 hours of receipt
3 in the office of the county clerk *and on the lead agency's Internet*
4 *Web site*. A notice shall remain posted for a period of 30 days.
5 Thereafter, the clerk shall return the notice to the local agency with
6 a notation of the period it was posted. The local agency shall retain
7 the notice for not less than 12 months.

8 (2) *If the lead agency cannot maintain an Internet Web site with*
9 *the information required pursuant to this section, the lead agency*
10 *shall provide a link on its Internet Web site that directs the user*
11 *to the required information.*

12 (d) (1) *A notice filed pursuant to this section shall also be filed*
13 *with the Office of Planning and Research.*

14 (2) *A notice filed pursuant to this subdivision shall be posted*
15 *by the Office of Planning and Research on its Internet Web site*
16 *within one business day after its filing. The notice shall be retained*
17 *on the Internet Web site for not less than 12 months.*

18 SEC. 5. If the Commission on State Mandates determines that
19 this act contains costs mandated by the state, reimbursement to
20 local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.